IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 32840 of 2006(H)

AGAINST THE ORDER IN EP.595/05 IN
OS.816/1999 of II ADDL.SUB COURT,THRISSUR

.....

PETITIONER:

T.R.SATHEESAN,
AGED 50, S/O.THAYYIL RAMAN,
T.C.41/53, BHAGAVATHY TEMPLE ROAD,
NEDUPUZHA DESOM, KANIMANGAL VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

ASSYRIAN CHARITIES KURI LIMITED,
M.O.ROAD, THRISSUR,
REP. BY CHAIRMAN.

BY //

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF OBJECTIONS FILED BY PETITIONER IN EP 595/05 IN OS 816/99 ON THE FILE OF 2ND ADDL.SUB COURT, THRISSUR DT.6/11/06

EXT.P2: COPY OF DRAFT SALE PROCLAMATION IN EP 595/05 IN OS 819/99 DT.24/2/06

EXT.P3: COPY OF ORDER PASSED IN EP 595/05 IN OS 816/99 DT.6/11/06

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 32840 OF 2006

Dated 8th January 2007

J U D G M E N T

Petitioner is the judgment debtor. Respondent is the decree holder. For realisation of the decree debt due under the decree in O.S.816/99, respondent filed E.P.595/05 before Sub court, Thrissur. To the notice served under Rule 66 of Order XXI, petitioner filed Ext.P1 objection. Under Ext.P3, learned Sub Judge directed sale of attached property. It is challenged in this petition filed under Article 227 of Constitution of India. Learned counsel appearing for petitioner was heard. Arguments of learned counsel appearing for petitioner was that in spite of Ext.P1 objection, learned Sub Judge did not consider the question whether the whole extent of property is to be sold for realisation of the decree debt and therefore Ext.P3 order is to be quashed.

2. Under Ext.P3 order learned Sub Judge directed sale of the decree schedule property after settling

proclamation. As the judgment debtor has raised a contention that value shown by the decree holder is far less than the actual value, learned Sub Judge directed the value claimed by the petitioner also be shown in the sale papers. That direction is in accordance with the second proviso to in sub rule 2 of Rule 66 of Order XXI of Code of Civil Procedure. Other ground taken in the objection was that it is a residential property. That is not a ground to refuse sale of the attached property.

3. Rule 66 of the Code cast an obligation on the court to consider whether sale of the entire attached property is necessary for realisation of the decree debt. If by sale of a part of the property, decree debt could be satisfied, executing court is to sell only that portion of the property. Rule 66 is an obligation on the executing court and not a discretion. As learned Sub Judge did not consider that question, Ext.P3 order directing sale of entire property is quashed. Learned Sub Judge is directed to consider the objection filed by judgment debtor and decide whether by sale of part of the attached schedule property, decree could be satisfied and if it is possible direct sale of only

part of the property. If the court finds that by sale of part of the property decree debt cannot be satisfied, it is competent for the court to direct sale of the entire property.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.